

107TH CONGRESS
1ST SESSION

S. 1768

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2001

Mrs. FEINSTEIN (for herself and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To authorize the Secretary of the Interior to implement the Calfed Bay-Delta Program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Calfed Bay-Delta Au-
5 thorization Act”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act:

8 (1) CALFED BAY-DELTA PROGRAM.—The term
9 “Calfed Bay-Delta Program” means the programs,
10 projects, complementary actions, and activities un-

1 dertaken through coordinated planning, implementa-
2 tion, and assessment activities of the State and Fed-
3 eral agencies in a manner consistent with the Record
4 of Decision.

5 (2) CALFED POLICY GROUP.—The term “Calfed
6 Policy Group” means a committee of State and Fed-
7 eral agencies established in the Record of Decision
8 to oversee the Calfed Bay-Delta Program, or the ap-
9 propriate successor entity created as part of any per-
10 manent governing structure pursuant to section
11 4(d).

12 (3) ENVIRONMENTAL WATER ACCOUNT.—The
13 term “Environmental Water Account” means the re-
14 serve of water provided for in the Record of Decision
15 to provide water, in addition to the amount of the
16 regulatory baseline, to protect and restore Delta
17 fisheries.

18 (4) FEDERAL AGENCIES.—The term “Federal
19 agencies” means the following:

20 (A) The Department of the Interior (in-
21 cluding the Bureau of Reclamation, Fish and
22 Wildlife Service, Bureau of Land Management,
23 and United States Geological Survey);

24 (B) The Environmental Protection Agency;

25 (C) The Army Corps of Engineers;

1 (D) The Department of Commerce (includ-
2 ing the National Marine Fisheries Service);

3 (E) The Department of Agriculture (in-
4 cluding the Natural Resources Conservation
5 Service and the Forest Service); and

6 (F) The Western Area Power Administra-
7 tion.

8 (5) GOVERNOR.—The term “Governor” means
9 the Governor of the State of California.

10 (6) IMPLEMENTATION MEMORANDUM.—The
11 term “Implementation Memorandum” means the
12 Calfed Bay-Delta Program Implementation Memo-
13 randum of Understanding dated August 28, 2000,
14 executed by the Federal agencies and the State
15 agencies.

16 (7) RECORD OF DECISION.—The term “Record
17 of Decision” means the Federal programmatic
18 Record of Decision dated August 28, 2000, issued
19 by the Calfed Federal agencies and supported by the
20 State.

21 (8) SECRETARY.—The term “Secretary” means
22 the Secretary of the Interior.

23 (9) STAGE 1.—The term “Stage 1” means the
24 programs and projects planned for the first 7 years

1 of the Calfed Bay-Delta Program, as specified in the
2 Record of Decision.

3 (10) STATE.—The term “State” means the
4 State of California.

5 (11) STATE AGENCIES.—The term “State agen-
6 cies” means the following:

7 (A) The Resources Agency of California
8 (including the Department of Water Resources
9 and the Department of Fish and Game);

10 (B) The California Environmental Protec-
11 tion Agency (including the State Water Re-
12 sources Control Board); and

13 (C) The California Department of Food
14 and Agriculture.

15 **SEC. 3. BAY-DELTA PROGRAM.**

16 (a) IN GENERAL.—The Record of Decision is ap-
17 proved as a framework for addressing Calfed Bay-Delta
18 Program components consisting of water storage, eco-
19 system restoration, water supply reliability, conveyance,
20 water use efficiency, water quality, water transfers, water-
21 sheds, Environmental Water Account, levee stability, gov-
22 ernance, and science. The Secretary, working with the
23 Federal agency heads, as appropriate, shall undertake ac-
24 tions pursuant to the Record of Decision, subject to the
25 provisions of this Act, so that the program goals consisting

1 of: protecting drinking water quality; restoring ecological
2 health; improving water supply reliability, including water
3 storage and conveyance; and protecting Delta levees; will
4 progress in a balanced manner.

5 (b) AUTHORIZED ACTIONS.—The Secretary is au-
6 thorized to take such actions, subject to the provisions of
7 this Act, as may be necessary to implement Stage 1 of
8 the Record of Decision if the activity has been subject to
9 environmental review and approval as required under ap-
10 plicable Federal and State law (including regulations); and
11 has been certified by the Calfed Policy Group to be con-
12 sistent with the Record of Decision.

13 (c) CONSTRUCTION AND ACQUISITION.—Any project
14 with the Federal share of construction costs in excess of
15 \$10 million to be constructed as part of the Calfed Bay-
16 Delta Program, including an enlarged Los Vaqueros Res-
17 ervoir, an enlarged Shasta Dam, and in-Delta storage, and
18 any acquisition in which the total Federal share is in ex-
19 cess of \$10 million for land or for assets for the Environ-
20 mental Water Account as part of the Calfed Bay-Delta
21 Program, shall require specific authorization by an Act of
22 Congress, in accordance with section 6.

1 **SEC. 4. MANAGEMENT.**

2 (a) COORDINATION.—In carrying out the Calfed Bay-
3 Delta Program, the Federal agencies shall coordinate their
4 activities with the stage agencies.

5 (b) PUBLIC PARTICIPATION.—In carrying out the
6 Calfed Bay-Delta Program, the Federal agencies shall co-
7 operate with local and tribal governments and the public
8 through a federally chartered advisory committee or other
9 appropriate means, to seek input on program elements
10 such as planning, design, technical assistance, and devel-
11 opment of peer review science programs.

12 (c) SCIENCE.—In carrying out the Calfed Bay-Delta
13 Program, the Federal agencies shall seek to ensure, to the
14 maximum extent practicable, that—

15 (1) all major aspects of implementing the Pro-
16 gram are subjected to credible and objective sci-
17 entific review; and

18 (2) major decisions are based upon the best
19 available scientific information.

20 (d) GOVERNANCE.—In carrying out the Calfed Bay-
21 Delta Program, the Secretary and the Federal agency
22 heads shall undertake their activities in accordance with
23 the terms of the Implementation Memorandum until such
24 time as the Implementation Memorandum is replaced by
25 approval of a permanent governing structure, whereupon
26 the Secretary and agency heads shall undertake their ac-

1 tivities in accordance with the permanent governing struc-
 2 ture. The Secretary and the Federal agency heads shall
 3 work with their State counterparts to develop a permanent
 4 governing structure and shall seek authorization and ap-
 5 proval of the permanent governing structure, as necessary.

6 **SEC. 5. REPORTING REQUIREMENTS.**

7 (a) REPORT AND CERTIFICATION BY CALFED.—The
 8 Secretary, in cooperation with the Governor, shall submit
 9 a report of the Calfed Policy Group by December 15 of
 10 each year to the appropriate authorizing and appro-
 11 priating Committees of the Senate and the House of Rep-
 12 resentatives that describes the status of implementation
 13 of all components of the Calfed Bay-Delta Program and
 14 that certifies that the Calfed Bay-Delta Program is pro-
 15 gressing in a balanced manner with respect to all program
 16 components, including water supply, ecosystem restora-
 17 tion, and water quality. The Secretary's report shall
 18 describe—

19 (1) the progress of the Calfed Bay-Delta Pro-
 20 gram in meeting the implementation schedule for the
 21 Program in a manner consistent with the Record of
 22 Decision;

23 (2) the status of implementation of all compo-
 24 nents of the Calfed Bay-Delta Program;

1 (3) expenditures in the past fiscal year and year
2 to date for implementing the Calfed Bay-Delta Pro-
3 gram; and

4 (4) accomplishments in the past fiscal year and
5 year to date in achieving the objectives of
6 improved—

7 (A) water storage;

8 (B) water quality;

9 (C) water use efficiency;

10 (D) ecosystem restoration;

11 (E) watershed management;

12 (F) levee system integrity;

13 (G) water transfers;

14 (H) water conveyances; and

15 (I) water supply reliability.

16 The report shall discuss the status of Calfed Bay-Delta
17 Program goals, current schedules, and relevant financing
18 agreements. Each of the above-listed categories must be
19 considered in determining whether the Program is pro-
20 ceeding in a balanced manner.

21 (b) REVISED SCHEDULE.—If the report provided for
22 in subsection (a) concludes that the Calfed Bay-Delta Pro-
23 gram is not progressing in a balanced manner so that no
24 certification of balanced implementation can be made, the
25 Calfed Policy Group shall prepare a revised schedule and

1 such other modifications, to ensure the Calfed Bay-Delta
2 Program will progress in a balanced manner consistent
3 with the intent of the Record of Decision. This revised
4 schedule is subject to approval by the Secretary and the
5 Governor and shall be submitted to the appropriate au-
6 thorizing and appropriating Committees of the Senate and
7 the House of Representatives.

8 (c) FINANCIAL SUMMARY.—In addition to the report
9 required pursuant to subsection (a), no later than Feb-
10 ruary 15 of each year the Secretary shall submit to the
11 appropriate authorizing and appropriating committees of
12 the Senate and the House of Representatives a financial
13 report containing a detailed accounting of all funds re-
14 ceived by Federal and State agencies for implementing the
15 Plan in the previous fiscal year budget and a budget for
16 the proposed projects to be carried out in the upcoming
17 fiscal year with the Federal portion of funds authorized
18 under this Act.

19 (d) CROSSCUT BUDGET REPORTS.—Not later than
20 February 15, 2003, and annually thereafter through Feb-
21 ruary 15, 2008, the Director of the Office of Management
22 and Budget shall submit to the appropriate authorizing
23 and appropriating committees of the Senate and the
24 House of Representatives an inter-agency budget crosscut
25 report that—

1 (1) displays the proposed Federal spending, for
 2 the fiscal year in which the report is submitted and
 3 for each subsequent fiscal year through 2007, on im-
 4 plementation of the Calfed Bay-Delta Program; and
 5 (2) identifies all expenditures to date within the
 6 Federal and State governments used to achieve the
 7 objectives of the Calfed Bay-Delta Program.

8 **SEC. 6. AUTHORIZATION REQUIREMENTS FOR CERTAIN**
 9 **CONSTRUCTION AND ACQUISITION ACTIVI-**
 10 **TIES.**

11 (a) CONSTRUCTION AND ACQUISITION ACTIVITIES.—
 12 The process for authorizing appropriations to pay the
 13 Federal share of the costs of acquisition of land and assets
 14 for the Environmental Water Account as part of the
 15 Calfed Bay-Delta Program, where such share exceeds \$10
 16 million, and the process for authorizing the construction
 17 of projects as part of the Calfed Bay-Delta Program,
 18 where the Federal share of such costs exceeds \$10 million,
 19 shall be as follows:

20 (1) REPORT.—Every odd-numbered year after
 21 the date of enactment of this Act, at the same time
 22 the Secretary submits the report described in section
 23 5(a), the Calfed Policy Group, acting through the
 24 Secretary, shall submit to the appropriate author-
 25 izing and appropriating Committees a report cov-

1 ering the next two fiscal years setting forth the list
2 of projects and other actions that are proposed for
3 construction or acquisition and a listing of proposed
4 acquisition for the Environmental Water Account, as
5 described in section 6(a). The Calfed Policy Group
6 and the Secretary shall certify that implementation
7 of the Calfed Bay-Delta Program in the manner set
8 forth in the report will result in balanced implemen-
9 tation in all Calfed Bay-Delta Program areas.

10 (2) AUTHORIZATION REQUIRED.—No amounts
11 may be appropriated for any fiscal year for any
12 project or acquisition in which the total federal
13 share is in excess of \$10 million for construction,
14 land acquisition, or acquisition of assets for the En-
15 vironmental Water Account, unless the project or ac-
16 quisition has been specifically authorized by law.

17 (3) INTENT OF CONGRESS.—It is the intent of
18 Congress that the authorizations and appropriations
19 for implementation of the Calfed Bay-Delta Program
20 shall promote and carry out the fundamental prin-
21 ciple that the Calfed Bay-Delta Program compo-
22 nents, consisting of water storage, ecosystem res-
23 toration, water supply reliability, conveyance, water
24 use efficiency, water quality, water transfers, water-
25 sheds, Environmental Water Account, levee stability,

1 governance, and science, must progress together in
2 a balanced manner.

3 (4) FAILURE TO AUTHORIZE OR FUND.—If the
4 Congress, through the authorization and appropria-
5 tion process amends, or fails to authorize or fund,
6 the projects or acquisitions included in a report sub-
7 mitted pursuant to subsection (a)(1), the Secretary
8 shall, in consultation with the Calfed Policy Group,
9 redetermine whether implementation of the projects
10 and acquisitions, as authorized or funded, respec-
11 tively, by the Congress will maintain balanced imple-
12 mentation in all Calfed Bay-Delta Program areas. If
13 the Secretary finds that implementation of such
14 projects or acquisitions, as so authorized or funded
15 by the Congress, will not maintain balanced imple-
16 mentation in all Program areas, the Secretary shall
17 report to the Congress the finding as part of the re-
18 port required under section 5(a) and recommend
19 those steps needed to restore balance to the imple-
20 mentation process, as part of the revised schedule
21 required under section 5(b).

22 (b) RECOMMENDATIONS AND REPORTS.—

23 (1) RECOMMENDATIONS REGARDING SPECIFIC
24 ACTIONS.—The Calfed Policy Group, through the
25 Secretary, shall include in the report under sub-

1 section (a) of this section recommendations with re-
2 spect to construction projects (including for surface
3 storage and groundwater storage) that would im-
4 prove water supply reliability and water quality and
5 recommendations with respect to acquisition of land
6 and assets for the Environmental Water Account
7 that would achieve Program goals.

8 (2) REPORTS ON CONSTRUCTION PROJECTS.—

9 With respect to construction projects with the Fed-
10 eral share of costs in excess of \$10 million, the Sec-
11 retary, acting in cooperation with the Governor,
12 shall transmit to the appropriate authorizing and
13 appropriating committees of the Senate and the
14 House of Representatives the reports of the Calfed
15 Policy Group regarding such construction projects in
16 accordance with the time frames set forth in the
17 Record of Decision or such other time frames as
18 may be approved by the Calfed Policy Group. Such
19 reports shall include—

20 (A) a project description;

21 (B) feasibility and operational studies com-
22 pleted by the Secretary or the Governor, as ap-
23 propriate;

24 (C) environmental impact statements or re-
25 ports;

1 (D) a finding of consistency with the
2 record of decision as determined by the CalFed
3 Policy Group;

4 (E) findings of the Independent Science
5 Panel relative to the consistency of the CalFed
6 Bay-Delta Program goals;

7 (F) cost-benefit analysis;

8 (G) a plan for fulfilling mitigation require-
9 ments;

10 (H) identification of project benefits and
11 beneficiaries;

12 (I) cost allocation plan consistent with the
13 beneficiaries pay provisions of the Record of
14 Decision;

15 (J) financing and repayment plans based
16 upon commitments by beneficiaries that they
17 are willing and able to pay their allocated
18 share;

19 (K) progress in the acquisition of the Fed-
20 eral and State permits including permits under
21 section 404(a) of the Federal Water Pollution
22 Control Act (33 U.S.C. 1344) for implementa-
23 tion of projects in all identified program areas;
24 and

1 (L) a recommendation, based on the re-
2 sults of items (A) through (K) above, on wheth-
3 er to proceed with the project.

4 **SEC. 7. ENVIRONMENTAL JUSTICE.**

5 It is the intent of the Congress that—

6 (1) implementation of the Calfed Program by
7 the Federal agencies and State agencies should ful-
8 fill the commitment to addressing environmental jus-
9 tice challenges referred to in the Calfed Bay Delta
10 Program Environmental Justice Workplan dated
11 December 13, 2000;

12 (2) the Federal agencies and State agencies
13 should continue to collaborate to develop a com-
14 prehensive environmental justice workplan for the
15 Calfed program, including through continuation of
16 the functions of the Calfed Bay-Delta Environmental
17 Justice Workgroup; and

18 (3) the Calfed Policy Group should collaborate
19 with such workgroup to ensure fulfillment of the
20 commitment referred to in paragraph (a).

21 **SEC. 8. GRANTS TO FEDERAL AGENCIES.**

22 The Secretary is authorized to make grants to the
23 Federal agencies assuming responsibility for the imple-
24 mentation of components of the Calfed Bay-Delta Pro-
25 gram pursuant to the Record of Decision. Such grants

1 shall be made pursuant to interagency agreements to be
2 entered into between the Secretary and the Federal agen-
3 cies.

4 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

5 There are authorized to be appropriated to the De-
6 partment of the Interior \$2,402,000,000 to pay the Fed-
7 eral share of carrying out Stage 1 of the Record of Deci-
8 sion for fiscal years 2003 through 2007, in accordance
9 with the provisions of this Act. The funds shall remain
10 available without fiscal year limitation.

11 **SEC. 10. COMPLIANCE WITH STATE AND FEDERAL LAW.**

12 Nothing in this Act preempts or otherwise affects any
13 Federal or State law.

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